



For a thriving New England

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November 9, 2015

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4 Columbus Square  
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Winter Island Yacht Yard, Inc.  
3A Winter Island Road  
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**VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED**

RE: Notice of Violations and Intent to File Suit under the Clean Water Act

To Whom It May Concern:

The Conservation Law Foundation (“CLF”)<sup>1</sup> hereby gives notice to the addressed persons of its intent to file suit pursuant to Section 505 of the Federal Water Pollution Control Act (“Clean Water Act,” “CWA,” or “Act”), 33 U.S.C. § 1365(a), for violations of the Act specified below. This letter constitutes notice pursuant to 40 C.F.R., Part 135 (the “Notice”), to the addressed persons of CLF’s intention to file suit in United States District Court of the District of Massachusetts, seeking appropriate equitable relief, civil penalties, and other relief no earlier than 60 days from the postmark date of this Notice letter.

The subject of this action is three-fold. First, Winter Island Yacht Yard, Inc. (hereinafter “Winter Island”) is discharging stormwater directly associated with boat storage, repair and transportation (SIC Code 4493) and boat building and repair (SIC Code 3732) at 3A Winter Island Road, Salem, MA 01970 (the “Facility”), to the waters of the United States without a permit, in violation of Sections 301(a) and 402(p)(2)(B) of the CWA, 33 U.S.C. §§ 1311(a) and 1342(p)(2)(B). Second, Winter Island has failed to obtain coverage under any Clean Water Act

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<sup>1</sup> CLF is a not-for-profit 501(C)(3) organization dedicated to the conservation and protection of New England’s environment. Its mission includes the conservation and protection of the many uses of the waters in and around the Charles watershed for, among other things, fishing, recreation, scenic/aesthetic and scientific purposes. CLF’s membership includes people who live in or near the Charles watershed, and use and enjoy the watershed for recreational, aesthetic, and/or scientific purposes. The interests of CLF’s members are adversely affected by the Facility’s discharges of stormwater pollution to the receiving waters without a permit and in violation of the Clean Water Act.

permit including the Multi-Sector General Permit<sup>2</sup> (“MSGP”) adopted by the United States Environmental Protection Agency (“EPA”) for industrial sources of polluted stormwater runoff, and failed to comply with the specific requirements of any such permit, in violation of Sections 402(p)(3)(A) and 402(p)(4)(A) of the CWA, 33 U.S.C. §§ 1342(p)(3)(A) and (p)(4)(A), and 40 C.F.R. §§ 122.26(c)(1) and (e)(1). In addition, Winter Island has failed to obtain individual National Pollutant Discharge Elimination System (“NPDES”) permit coverage for the Facility’s process water discharges associated with its engine flushing, pressure washing, filter cleaning, and other boat maintenance services.

## BACKGROUND

The EPA has identified Winter Island as a facility (Source Feature Identifiers MAD0000155<sup>3</sup> and MAU000154<sup>4</sup>) that discharges into water within the Charles watershed. Winter Island discharges into Salem Harbor (Waterbody ID MA93-54), which flows directly thereafter into the Atlantic Ocean.

Winter Island discharges into Salem Harbor (Waterbody ID MA93-54), a marine waterbody approximately five square miles in size. EPA has designated Waterbody MA93-54 as impaired pursuant to Section 303(d) of the Act, 33 U.S.C. § 1313(d), for failure to meet minimum water quality standards. The Salem Harbor is impaired for impaired biota and pathogens, namely fecal coliform.<sup>5</sup> Stormwater and urban-related runoff have been identified as probable sources of impairments in Waterbody MA93-54.

Stormwater is water from precipitation events that flows across the ground and pavement after rain events or after snow and ice melt.<sup>6</sup> Industrial activities, such as material handling and storage, vessel refinishing and painting, vessel and equipment fluid changes, equipment maintenance and cleaning, boat and vehicle exterior washing, industrial processing, mechanical repairs, fueling, engine flushing, or other operations that occur at industrial facilities, may be

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<sup>2</sup> ENVIRONMENTAL PROTECTION AGENCY, MULTI-SECTOR GENERAL PERMIT FOR STORMWATER DISCHARGES ASSOCIATED WITH INDUSTRIAL ACTIVITY (MSGP) [hereinafter MSGP], *available at* [http://water.epa.gov/polwaste/npdes/stormwater/upload/msgp2015\\_finalpermit.pdf](http://water.epa.gov/polwaste/npdes/stormwater/upload/msgp2015_finalpermit.pdf) (last visited September 17, 2015).

<sup>3</sup>[http://iaspub.epa.gov/enviro/ICIS\\_DETAIL\\_REPORTS\\_NPDESID.icis\\_tst?npdesid=MAD000155&npvalue=1&npvalue=13&npvalue=14&npvalue=3&npvalue=4&npvalue=5&npvalue=6&rvalue=13&npvalue=2&npvalue=7&npvalue=8&npvalue=11&npvalue=12](http://iaspub.epa.gov/enviro/ICIS_DETAIL_REPORTS_NPDESID.icis_tst?npdesid=MAD000155&npvalue=1&npvalue=13&npvalue=14&npvalue=3&npvalue=4&npvalue=5&npvalue=6&rvalue=13&npvalue=2&npvalue=7&npvalue=8&npvalue=11&npvalue=12) (last visited November 6, 2015).

<sup>4</sup>[http://iaspub.epa.gov/enviro/ICIS\\_DETAIL\\_REPORTS\\_NPDESID.icis\\_tst?npdesid=MAU000154&npvalue=1&npvalue=13&npvalue=14&npvalue=3&npvalue=4&npvalue=5&npvalue=6&rvalue=13&npvalue=2&npvalue=7&npvalue=8&npvalue=11&npvalue=12](http://iaspub.epa.gov/enviro/ICIS_DETAIL_REPORTS_NPDESID.icis_tst?npdesid=MAU000154&npvalue=1&npvalue=13&npvalue=14&npvalue=3&npvalue=4&npvalue=5&npvalue=6&rvalue=13&npvalue=2&npvalue=7&npvalue=8&npvalue=11&npvalue=12) (last visited November 6, 2015).

<sup>5</sup> [http://ofmpub.epa.gov/waters10/attains\\_waterbody.control?p\\_au\\_id=MA93-54&p\\_list\\_id=MA93-54&p\\_cycle=2012](http://ofmpub.epa.gov/waters10/attains_waterbody.control?p_au_id=MA93-54&p_list_id=MA93-54&p_cycle=2012) (last visited November 6, 2015).

<sup>6</sup> See 40 C.F.R. § 122.26(b)(13).

exposed to stormwater flow.<sup>7</sup> Stormwater from industrial facilities, contaminated with pollutants, is then conveyed into nearby waterbodies.<sup>8</sup>

In order to discharge stormwater lawfully, Winter Island is required to apply for coverage under a Clean Water Act discharge permit such as the MSGP. The 2008 MSGP expired by its terms on September 29, 2013.<sup>9</sup> On June 4, 2015, after expiration of the prior permit, the EPA issued a new MSGP requiring all covered facilities to file an NOI for coverage under the 2015 permit. Winter Island was specifically required to apply for coverage under the MSGP by filing a Notice of Intent ("NOI") within ninety days after the initial issuance of the MSGP.<sup>10</sup>

Having failed to timely apply for coverage under the 2015 MSGP, a continuation of coverage under the 2008 MSGP, or any other valid authorization, Winter Island is operating in violation of the Clean Water Act.

### **PERSONS RESPONSIBLE FOR ALLEGED VIOLATIONS**

Winter Island Yacht Yard, LLC is the person, as defined by Section 502(5) of the CWA, 33 U.S.C. § 1362(5), responsible for the violations alleged in this Notice. Winter Island has operated the Facility since at least 1981 and currently advertises as the operator of the Facility.<sup>11</sup> Winter Island and its agents and directors, including but not limited to Peter S. Haywood, president and director, have operational control over the day-to-day industrial activities at this Facility. Therefore, they are responsible for managing stormwater at the Facility in compliance with the Clean Water Act.

### **LOCATION OF THE ALLEGED VIOLATION**

The violations alleged in this Notice have occurred and continue to occur at the marina and boat maintenance Facility located at 3A Winter Island Road, Salem, MA 01970.

### **ACTIVITIES ALLEGED TO BE VIOLATIONS**

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<sup>7</sup> See 40 C.F.R. § 122.26(b)(14).

<sup>8</sup> See 58 Fed. Reg. 61,146, 61,154 (November 19, 1993).

<sup>9</sup> 2008 MSGP, [http://www3.epa.gov/npdes/pubs/msgp2008\\_finalpermit.pdf](http://www3.epa.gov/npdes/pubs/msgp2008_finalpermit.pdf) (last visited November 6, 2015).

<sup>10</sup> EPA's Final National Pollutant Discharge Elimination System Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity (MSGP) was first issued in 1995, reissued in 2000, 2008, and 2015. See 60 Fed. Reg. 50,804 (Sept. 29, 1995); 65 Fed. Reg. 64,746 (Oct. 30, 2000); 73 Fed. Reg. 56,572 (Sept. 29, 2008); 80 Fed. Reg. 34,403 (June 16, 2015). See MSGP parts 1.1 and 1.2.

<sup>11</sup> See Massachusetts state records:

[http://corp.sec.state.ma.us/CorpWeb/CorpSearch/CorpSummary.aspx?FEIN=042741522&SEARCH\\_TYPE=1](http://corp.sec.state.ma.us/CorpWeb/CorpSearch/CorpSummary.aspx?FEIN=042741522&SEARCH_TYPE=1) (last visited October 30, 2015).

Winter Island has, and continues to, engage in “industrial activities,” and its operations fall under SIC Codes 4493 and 3732, within the meaning of 40 C.F.R. §§ 122.26(b)(14)(ii) & (viii).<sup>12</sup>

Because the Facility has primary SIC Codes of 4493 and 3732 and discharges stormwater associated with industrial activity, Winter Island is required to apply for, obtain coverage under, and comply with the requirements of a NPDES permit such as the MSGP. In addition, Winter Island is required to obtain individual NPDES permit coverage for process water discharges that may result from activities such as hull pressure washing, flushing boat engines and cleaning fuel filters. Winter Island has failed to take any of these required steps.

Activities at the Facility include, but are not limited to: boat transportation, storage, and maintenance; flushing boats engines and draining blocks or manifolds; hull pressure washing, repairing engines; cleaning and changing oil filters and fuel filters; handling, transferring, storing and disposing of materials; and shipboard processes resulting in improper discharges to storm sewers or into receiving water. Heavy machinery and other equipment is operated and stored outdoors, therefore being exposed to and corroded by the elements. Vehicles driving on and off the Facility site track pollutants off-site and into the air.

Industrial equipment, materials and vehicles at the Facility are exposed to precipitation and snowmelt. Precipitation falls on and flows over the Facility, picking up paint solids, heavy metals, total suspended solids (TSS), total dissolved solids (TDS), diesel/gas fuel, ethylene glycol (anti-freeze), acid and alkaline wastes, solvents, oil, low density waste (floatables), trash, and other pollutants associated with the Facility’s operations. The polluted runoff is then conveyed off-site into waters of the United States via man-made collection systems, sloped surfaces and site grading, shallow subsurface hydrological connections, and through the operation of gravity.

## **STANDARDS AND LIMITATIONS ALLEGED TO HAVE BEEN VIOLATED**

The Clean Water Act prohibits the discharge of pollutants to the waters of the United States except in accordance with a valid NPDES permit.<sup>13</sup> Winter Island discharges stormwater associated with its industrial activity, as defined by 40 C.F.R. § 122.26(b)(14), from its Facility into waters of the United States. Because Winter Island has not obtained coverage for these stormwater discharges under the MSGP or an individual NPDES permit, it is illegally discharging stormwater without a permit, in violation of Sections 301(a) and 402(p)(2)(B) of the CWA, 33 U.S.C. §§ 1311(a) and 1342(p)(2)(B).<sup>14</sup> By failing to apply for and comply with the specific requirements of the MSGP and individual NPDES permit program, Winter Island is in

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<sup>12</sup> See MSGP, Appendix D: Activities Covered. Water transportation (SIC 4493) and boat and ship building and repair (SIC 3732) facilities are subject to the requirements of the MSGP for stormwater discharges.

<sup>13</sup> 33 U.S.C. § 1311(a).

<sup>14</sup> See 33 U.S.C. § 1362(12); 40 C.F.R. § 122.2; MSGP, Appendix A: Definitions, Abbreviations, and Acronyms (defining the term “discharge of a pollutant” as, *inter alia*, “any addition of any ‘pollutant’ or combination of pollutants to ‘waters of the United States’ from any ‘point source’”).

violation of Sections 402(p)(3)(A) and 402(p)(4)(A) of the CWA, 33 U.S.C. §§ 1342(p)(3)(A) and (p)(4)(A), and 40 C.F.R. §§ 122.26(c)(1) and (e)(1). In addition, unpermitted discharges of process wastewater constitute violations of Section 301(a) of the CWA, 33 U.S.C. § 1311(a), and CLF puts Winter Island on notice that CLF intends to pursue claims related to Winter Island's unpermitted discharges of process water to waters of the United States.

**a. Winter Island is discharging stormwater to waters of the United States without a permit.**

Winter Island is an industrial discharger with primary SIC Codes of 4493 and 3732, which means that pursuant to Section 402(p) of the Act, 33 U.S.C. § 1342(p), Winter Island is obligated to apply for coverage under the MSGP or to obtain other legal authorization. Because Winter Island has operated and continues to operate without a permit under Section 402(p), 33 U.S.C. § 1342(p), Winter Island is in violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a).

In addition, during storm events, Winter Island's "industrial activities" at its Facility have resulted in a "discharge of pollutants" within the meaning of Section 502(12) of the CWA, 33 U.S.C. § 1362(12) and "stormwater discharge associated with industrial activity" within the meaning of 40 C.F.R. § 122.26(b)(14), from its Facility on each and every day that there has been a measurable precipitation event of above 0.1 inches.<sup>15</sup> There have been many such storm events since 2010. The Facility is generating pollutants from and through at least the following point sources: travel lifts, marine railways and ramp systems, catch basins and drains, site grading, machines and equipment left outdoors, fueling stations, vehicles driving on and off the Facility, and other conveyances to Salem Harbor and other waters of the United States.<sup>16</sup> Salem Harbor flows into the Atlantic Ocean, and both waterbodies are "waters of the United States," as defined in 40 C.F.R. § 122.2, and therefore are also "navigable waters," as defined in Section 502(7) of the CWA, 33 U.S.C. § 1362(7). The Facility is discharging this industrial stormwater without the permit required under Section 402 of the Act, 33 U.S.C. § 1342.

**b. Winter Island is discharging process water to waters of the United States without a permit.**

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<sup>15</sup> See 40 C.F.R. § 122.26(c)(i)(E)(6). EPA has determined that precipitation greater than 0.1 inches in a 24-hour period constitutes a measurable precipitation event for the purposes of evaluating stormwater runoff associated with industrial activity.

<sup>16</sup> These discharges constitute "point sources" as defined by 33 U.S.C. § 1362(14) and 40 C.F.R. § 122.2. CLF specifically puts Winter Island on notice that the unpermitted stormwater discharges associated with industrial activity include discharges from the Facility areas specified in 40 C.F.R. § 122.26(b)(14). See also 40 C.F.R. § 122.2, which states that the definition of "discharge of a pollutant" "includes additions of pollutants into waters of the United States from: surface runoff which is collected or channelled by man[.]"

Boat washwater is classified as “process wastewater” under the federal Clean Water Act and as defined in 40 C.F.R. § 122.2.<sup>17</sup> Wastewater produced by flushing engines, washing boats, and cleaning fuel filters can contain a variety of pollutants including detergents, oil, grease, and dissolved metals from antifouling paints. Ablative bottom paints, which are designed to slowly slough away from the boat hull, are particularly prone to contaminating washwater with toxic metals such as zinc, copper, and occasionally lead. In addition, solids suspended in washwater, such as paint chips and organic material, can pollute ground and surface water if handled improperly. Process wastewater can be toxic to marine life and can have severe and long-term impacts on aquatic environments. In addition, improperly managed pressure washing or engine flushing operations can result in unsightly plumes that discolor natural waterways and stain natural features with bottom paint and oils.

Discharges of process water that result from flushing engines and cleaning boat equipment are not covered under the MSGP. Discharges of process wastewater must instead be covered under an individual NPDES permit. Winter Island does not have an individual NPDES permit authorizing the discharge of pressure washwater to waters of the United States. CLF intends to pursue claims related to Winter Island’s unpermitted discharges of process water to waters of the United States, namely Salem Harbor.

**c. Winter Island is violating the Clean Water Act by failing to obtain coverage and failing to comply with the requirements of the MSGP.**

Winter Island is violating Sections 402(p)(3)(A) and 402(p)(3)(4) of the CWA, 33 U.S.C. §§ 1342(p)(3)(A) and (p)(4)(A), and 40 C.F.R. §§ 122.26(c)(1) and (e)(1), by failing to apply for, obtain coverage, and comply with the requirements of the MSGP after the expiration of its prior permit.<sup>18</sup> The Facility has primary SIC Codes of 4493 and 3732 and must obtain coverage under the MSGP for its stormwater discharges and for stormwater discharges from any co-located industrial activities.<sup>19</sup> Winter Island’s failure to obtain coverage and comply with the permit is in violation of the MSGP and Section 402(p) of the Clean Water Act, 33 U.S.C. § 1342(p).<sup>20</sup>

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<sup>17</sup> “Process wastewater” is here defined as “any water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, byproduct, or waste product.”

<sup>18</sup> MSGP part 1.1 and 1.2.

<sup>19</sup> See MSGP part 1.1; MSGP parts 8.Q and 8.R.

<sup>20</sup> A thorough search of EPA’s database indicates that Winter Island has not filed an NOI for the Facility.

### **1) Winter Island Must Develop and Implement a Stormwater Pollution Prevention Plan (SWPPP).**

As a prerequisite to applying for coverage under the MSGP, Winter Island must develop and implement a Stormwater Pollution Prevention Plan ("SWPPP").<sup>21</sup> The SWPPP must include, but is not limited to, the following: information related to a company stormwater pollution prevention team, a site description, a summary of pollutant sources, a description of control measures, and schedules and procedures pertaining to control measures and monitoring.<sup>22</sup> Winter Island has failed to develop and implement a SWPPP in accordance with the MSGP requirements in violation of the MSGP and Section 402(p) of the Clean Water Act, 33 U.S.C. § 1342(p).

### **2) Winter Island Must Submit to EPA a Complete Notice of Intent to be Covered under the MSGP.**

To be eligible to discharge under the MSGP, Winter Island must submit a complete Notice of Intent ("NOI") to the EPA.<sup>23</sup> To complete the NOI, Winter Island is required to determine whether the body of water to which the stormwater discharges is an "impaired" waterbody, and whether the Facility discharges any specific pollutants listed on the NOI to that waterbody.<sup>24</sup> Salem Harbor is classified as an "impaired" waterway.<sup>25</sup> Additionally, as part of preparing the NOI, the covered Facility must make certain verifications, such as ensuring that no harm is done to a species in violation of the Endangered Species Act.<sup>26</sup> Winter Island has failed to prepare and file an NOI meeting all applicable requirements in violation of the MSGP and Section 402(p) of the Clean Water Act, 33 U.S.C. § 1342(p).

### **3) Winter Island Must Take Control Measures and Meet Water-Quality Effluent Limitations.**

To be eligible to discharge under the MSGP, Winter Island must select, design, install, and implement control measures (including best management practices) to prevent polluted stormwater discharges from reaching nearby waterbodies. Winter Island must address the selection and design considerations in the permit, meet the non-numeric effluent limitations in the permit, and meet limits contained in applicable permit effluent limitations guidelines.<sup>27</sup> These control practices must be in accordance with good engineering practices and

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<sup>21</sup> See MSGP part 5.

<sup>22</sup> See MSGP part 5.2.

<sup>23</sup> See MSGP part 1.2.

<sup>24</sup> See MSGP part 2.2.2.

<sup>25</sup> See *supra* note 5.

<sup>26</sup> See MSGP part 1.1.4.5 and 2.3.

<sup>27</sup> See MSGP part 2.1.

manufacturer's specifications.<sup>28</sup> If the control measures are not achieving their intended effect of minimizing pollutant discharges, the permittee must modify these control measures as expeditiously as practicable.<sup>29</sup> Winter Island has failed to cover the materials and operations that may result in polluted stormwater runoff. Winter Island has not implemented the required control measures in violation of the MSGP and Section 402(p) of the Clean Water Act, 33 U.S.C. § 1342(p).

#### **4) Winter Island Must Conduct Routine Facility Inspections.**

To be eligible to discharge under the MSGP, Winter Island must conduct routine inspections of all areas of the Facility where industrial materials or activities are exposed to precipitation, and must ensure that all stormwater control measures comply with the effluent limits contained in the MSGP.<sup>30</sup> Routine inspections must be conducted at least quarterly but in many instances monthly inspections are most appropriate.<sup>31</sup> These inspections must occur when the Facility is in operation.<sup>32</sup> The schedule of these inspections must be included in the Facility's SWPPP and be performed by qualified personnel.<sup>33</sup> Winter Island has failed to conduct the required routine inspections in accordance with the MSGP requirements in violation of the MSGP and Section 402(p) of the Clean Water Act, 33 U.S.C. § 1342(p).

#### **5) Winter Island Must Comply with the Required Monitoring and Sampling Procedures.**

To be eligible to discharge under the MSGP, Winter Island must collect and analyze stormwater samples and document monitoring activities consistent with the procedures in the MSGP.<sup>34</sup> The MSGP requires five types of analytical monitoring (one or more of which may apply) including quarterly benchmark monitoring, annual effluent limitations guidelines monitoring, State or Tribal-specific monitoring, impaired waters monitoring, and other monitoring as required by the EPA.<sup>35</sup> An operator must monitor each outfall identified in the SWPPP covered by a numeric effluent limit.<sup>36</sup> Required monitoring must be performed after stormwater events that result in an actual discharge on a required schedule.<sup>37</sup> All monitoring data collected under the MSGP must be reported to EPA. Furthermore, because Salem Harbor is an "impaired water" under Section 303(d) of the CWA, 33 U.S.C. § 1313(d), Winter Island must monitor for all pollutants for which

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<sup>28</sup> *Id.*

<sup>29</sup> *Id.* See also MSGP Part 4.

<sup>30</sup> See MSGP part 3.1.

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> See MSGP part 6.

<sup>35</sup> See MSGP part 6.2.

<sup>36</sup> See MSGP part 6.1.1.

<sup>37</sup> See MSGP part 6.1.3.

Salem Harbor is impaired.<sup>38</sup> Winter Island has failed to conduct the required monitoring under the MSGP and has failed to submit the required monitoring reports to EPA in violation of the MSGP and Section 402(p) of the Clean Water Act, 33 U.S.C. § 1342(p).

#### **6) Winter Island Must Carry out the Required Reporting and Recordkeeping.**

Winter Island must maintain and submit any and all required monitoring data.<sup>39</sup> Such monitoring data includes the following: an annual report to EPA which includes the Facility's findings from the annual comprehensive site inspection and any documentation of corrective actions;<sup>40</sup> an Exceedance Report to the EPA if any of the follow-up monitoring shows exceedances of a numeric effluent limit;<sup>41</sup> and any other required reports under the MSGP.<sup>42</sup> Winter Island has failed to maintain the required records and failed to submit all required monitoring data under the MSGP in violation of the MSGP and Section 402(p) of the Clean Water Act, 33 U.S.C. § 1342(p).

#### **7) Winter Island Must Comply with the Requirements of MSGP Parts Q and R**

Winter Island must also comply with the sector-specific requirements contained in Subparts Q and R under Part 8 of the MSGP.<sup>43</sup> Subparts Q and R require water transportation and boat building and repair facilities to implement additional technology-based effluent limits,<sup>44</sup> meet additional SWPPP and inspection requirements,<sup>45</sup> and monitor stormwater discharges for compliance with the benchmark limitations applicable specifically to water transportation facilities.<sup>46</sup> Winter Island has failed to comply with the requirements of Subparts Q and R of the MSGP in violation of the MSGP and Section 402(p) of the Clean Water Act, 33 U.S.C. § 1342(p).

### **DATES OF VIOLATION**

Each day on which Winter Island operates its Facility without permit coverage or discharges stormwater and/or process wastewater without a permit from the Facility is a separate and distinct violation of Sections 301(a) and 402(p)(2)(B) of the CWA, 33 U.S.C. §§ 1311(a) and 1342(p)(2)(B).

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<sup>38</sup> See MSGP part 6.2.4.

<sup>39</sup> See MSGP part 7.

<sup>40</sup> See MSGP part 7.5.

<sup>41</sup> See MSGP part 7.6.

<sup>42</sup> See MSGP part 7.7.

<sup>43</sup> See MSGP, Appendix D, Table D-1, Sectors Q and R.

<sup>44</sup> See MSGP parts 8.Q.3; 8.R.3.

<sup>45</sup> See MSGP part 8.Q. 4; 8.Q.5; 8.R.4; 8.R.5

<sup>46</sup> See MSGP 8.Q.6.

Winter Island has discharged stormwater without a permit in violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a), on every day since at least September of 2013 on which there has been a measurable precipitation event. Each day on which Winter Island operates its Facility without permit coverage or discharges process water without a permit from the Facility is a separate and distinct violation of Section 301(a) of the CWA, 33 U.S.C. §§ 1311(a).

Every day, since at least 2013, on which Winter Island has failed and continues to fail to apply for, obtain coverage, and comply with the requirements of the MSGP is a violation of Section 402(p)(3)(A) and (p)(4)(A) of the CWA, 33 U.S.C. §§ 1342(p)(3)(A) and (p)(4)(A).

Each day on which Winter Island operates its Facility without permit coverage or discharges process water without a permit from the Facility is a separate and distinct violation of Section 301(a) of the CWA, 33 U.S.C. §§ 1311(a).

These violations are ongoing and continuous, and barring a change in the stormwater management controls at the Facility and full compliance with the permitting requirements of the Clean Water Act, these violations will continue indefinitely.

### **RELIEF REQUESTED**

Winter Island is liable for the above-described violations occurring prior to the date of this letter, and for every day that these violations continue. Pursuant to Section 309(d) of the Act, 33 U.S.C. § 1319(d), and the Adjustment of Civil Monetary Penalties for Inflation, 40 C.F.R. § 19.4, each separate violation of the Act subjects Winter Island to a penalty up to \$37,500 per day for each violation that occurred after January 12, 2009.<sup>47</sup> CLF will seek the full penalties allowed by law.

In addition to civil penalties, CLF will seek declaratory relief and injunctive relief to prevent further violations of the Clean Water Act pursuant to Sections 505(a) and (d), 33 U.S.C. § 1365(a) and (d), and such other relief as permitted by law. CLF will seek an order from the Court requiring Winter Island to correct all identified violations through direct implementation of control measures and demonstration of full regulatory compliance.

Lastly, pursuant to Section 505(d) of the Act, 33 U.S.C. § 1365(d), CLF will seek recovery of costs and fees associated with this matter.

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<sup>47</sup> 40 C.F.R. § 19.2

**CONCLUSION**

During the 60-day notice period, CLF is willing to discuss effective remedies for the violations noted in this letter that may avoid the necessity of further litigation. If you wish to pursue such discussions, please have your attorney contact Zachary Griefen within the next 20 days so that negotiations may be completed before the end of the 60-day notice period. We do not intend to delay the filing of a complaint in federal court if discussions are continuing at the conclusion of the 60 days.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Zachary K. Griefen', with a stylized, flowing script.

Zachary K. Griefen, Esq.  
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